

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1350

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

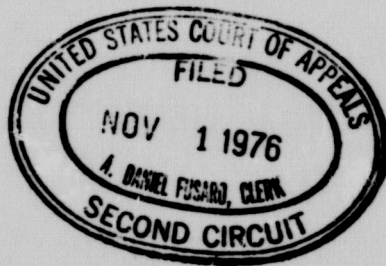
Plaintiff-Appellee,

- against -

CARL GARY PETROLE and
ANTHONY DE STEFANO,

Defendants- Appellants.

APPENDIX TO BRIEF ON BEHALF
OF APPELLANT



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1
2 A No.

3 Q Did you get any of the money from these
4 commissions?

5 A No.

6 Q Did you ever believe you were entitled to it?

7 A No.

8 Q Did you have anything to do with it at all?

9 A No.

10 Q Do you recall yesterday or the day before a
11 man by the name of Mr. Campirides testifying?

12 A Yes.

13 Q Do you know him?

14 A Yes.

15 Q Did you ever have any business dealings of
16 any kind or nature with him?

17 A Not other than collecting dues.

18 Q Other than that, did you have any business
19 transactions with him?

20 A I don't think so.

21 Q Do you recall a man named Mr. Tillman testified
22 here yesterday with respect to an event at Eden Trucking?

23 A Yes.

24
25 (continued next page)

DeStefano-direct

mp/33

BY MR. SONENSHINE:

3an2

Q Did you ever appear at Eden Trucking?

A Yes.

Q Did something happen there?

A Yes.

Q Would you tell us what happened?

A I went over there with Lou. One of the members had called the office and said there was a new van on his stop and if we were to go down and talk to the guy, and we did.

Q Now, when you got there, were there a great many cab drivers milling around these two trucks?

A YES.

THE COURT: Don't lead the witness, please.

Q Would you tell us, please, what you said and did and what the man with the truck said and did and what anyone else said and did in connection with this transaction?

A Well, Lou spoke to them mostly. "Why you coming here? This man has been here so long."

The man said "I am here to make a living."
Lou said, "Everybody wants to make a living. Do you think it's right taking the money out of this man's pocket?"

Actually they got into a dispute with him.

Q At that point, had you said anything?

2

DeStefano-direct

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2

A No.

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Q What happened next?

4

A Then he passed a remark.

5

Q Who passed a remark and what was the remark?

6

A Do I have to say it?

7

Q Yes.

8

A He said "If I don't get out, what's the fat guy

9

going to do, come break my legs?"

10

Q Who said that?

11

A The guy in the truck.

12

Q Was that the short man or the taller man?

13

A The short man.

14

Q What happened next?

15

A Well, I said, "Hey, listen, did I say anything

16

to you?" I was embarrassed. There were a lot of men around.

17

It just got me.

18

Q What did you say?

19

A I told him I am not talking and this gentleman

20

is, "Why don't you talk to him like a gentleman like he is

21

talking to you and don't call me fat. If you know what's

22

good for you, don't call me fatso again."

23

Q When you had this conversation with him, was

24

that conversation in connection with your being a member of

25

the association or was this because he insulted you?

1 DeStefano-direct

2 A He insulted me. I don't know the man, he had
3 no right to say that to me.

4 Q Did you in any way threaten him?

5 A "Don't call -- if you know what's good for you,
6 don't talk to me like that again."

7 Q In saying that, you weren't saying that in
8 connection with your work --

9 THE COURT: Sustained.

10 Q You recall a man named Adams?

11 A Yes.

12 Q Did you know Mr. Adams?

13 A Yes.

14 Q Was he a member of the association?

15 A Yes.

16 Q Did you hear him testify with respect to the
17 incident at one of the meetings?

18 A Yes.

19 Q Were you present at that meeting?

20 A President?

21 Q Were you there?

22 A Yes.

23 Q Would you tell us what occurred between you and
24 Mr. Adams at that meeting?

25 A He was feeling his oats, had a few drinks and h

4 DeStefano-direct

was noisy at the meeting and I told him five or six times
"Walter, please let the man talk. Listen, if you don't keep
quiet, I will have you removed from the meeting."

Q What did you do?

A He walked out. He said "You don't have to have
me removed, I will leave."

Q Was there a time he wouldn't talk to you?

A He was mad at me.

Q Did there come a time when you patched up that
quarrel?

A Yes.

Q Was that the end of it?

A Yes.

Q Mr. DeStefano, did you ever conspire with
anyone, be it these defendants --

MR. WEINTRAUB: I will wait until you finish
the question.

Q Okay.

Did you ever conspire with anyone to restrain
or interfere with interstate commerce by allocating locations
for the sale of -- let me rephrase it.

MR. WEINTRAUB: I object.

THE COURT: I will allow it.

Q Did you ever conspire in such a manner with

5 DeStefano-direct

anybody?

A No.

Q Did you ever conspire to prevent persons who were not members of the association from competing at locations served by members of the association?

A Can you put it plainer?

Q Did you ever enter into any kind of conspiracy with anybody to prevent persons who were not members of the association from competing at locations that were served by members of the association?

A Well, at the meeting the men used to try to suggest different ways to get rid of persons like that.

Q Did you ever conspire with anyone --

A No. Whatever the men decided to do, if it was legal, we had attorneys there.

Q Did you ever conspire with anybody to obstruct or in any way to delay commerce in any way?

A No.

Q Did you ever conspire or use extortion or threats of force or violence to prevent anybody from competing for catering accounts?

A No.

Q Did you ever conspire with anybody to use threats of economic harm to obtain money from anybody?

1 6 DeStefano-direct

2 A No.

3 Q Did you ever, while as a member of the
4 association, engage in any kind of racketeering activities
5 such as extortion or coercion or threats to prevent anybody
6 from servicing mobile catering accounts?

7 A No.

8 Q Or extort money from anybody?

9 A No.

10 Q Did you ever try to get anyone to give false
11 testimony before a grand jury or a jury?

12 A No.

13 Q Did you at any time attempt to obstruct
14 commerce by extortion upon David Levy?

15 A No.

16 Q Or get property from him or prevent him from
17 servicing a stop at Eden Transportation?

18 A Say it again?

19 Q Did you at any time attempt to obstruct
20 commerce by extortion upon David Levy either to get property
21 from him or money from him or prevent him from servicing the
22 stop at Eden Transportation?

23 MR. WEINTRAUB: I object.

24 THE COURT: It's about five questions in one but
25 I will allow it.

1
2 Q Well, o.k. We don't want it verbatim. If
3 you don't --

4 A We decided -- he said he would talk to the
5 fellows. In essence, this is what happened in essence. He
6 said, I'll talk to the fellows and see if they are interested
7 in buying -- remember, I cannot make them buy from you. I
8 could only suggest. They might tell you that they will
9 probably buy a few of your items and then -- he used the
10 word that they weren't nice people. They would promise you
11 one thing and do another. But he said he'll collect the
12 money for them because they had a stop there and we couldn't
13 get to the stop to collect the money. And he said, if I
14 pick it up will you guys give me a percentage. And I said
15 I will gladly give you a percentage, ten per cent. I said we
16 would give something like that. And if that's too much as
17 to every time he came down, I would -- I don't know what we
18 ended up with, whether it was 4 or 5 per cent. It was
19 very little. That's -- that's as I remember it.

20 Q But initially you agreed to pay 10 per cent?

21 A Yes, I did. With the option that we could
22 bring it down if I couldn't make any money. He said, fine.

23 Q How many association drivers started buying
24 from you?

25 A Initially, there were only a couple. 2 or 3
that we tried to sell, as I recall.

Conversal - Direct

Q During that meeting did you tell them what the price of the business was?

A I imagine I did.

Q Do you remember what price you quoted?

A I truthfully cannot tell you what the price was at this time.

Q Did you tell them they had to pay ten percent to Gary?

A Sure. If they're-- At that time they had to pay, as I recall; I can't remember. I think I said, "I'm paying Gary ten percent." But I wasn't really paying him ten percent. I was trying to make a buck for him if I could. He was also giving to us at that time.

Q You said eventually the drivers went someplace else. Where did they go?

A Some went to a fellow named Bruce, before that some went back to the Quick Snack and I think Gus, and I'm not sure, I think Gus Stingo opened their own place, buying sandwiches and from us, as I recall.

MR. WEINTRAUB: Might I have a moment, your

Honor?

(Pause)

Q Has it your understanding, Mr. Conversal, if you didn't pay this money to Mr. Petrole the drivers could

Conversational

1
2 elsewhere?

3 A No. He couldn't make the drivers do anything.
4 I understood they could do as they please.

5 Q They can do as they please.

6 MR. WEINTRAUB: I have no further questions.

7 CROSS EXAMINATION

8 BY MR. LANG:

9 Q Hello, my name is John Lang, and I represent
10 Mr. Philip Rastelli. I want to ask you a couple of ques-
11 tions. Were you subpoenaed here by the prosecutors, the
12 Government?

13 A Yes, sir.

14 Q When you were subpoenaed, did they ask you to
15 produce any records from your company back in 1967 or '68?

16 A When I was subpoenaed?

17 Q Yes.

18 A No.

19 Q They did not?

20 A Not when I was subpoenaed, no.

21 MR. LANG: Thank you very much. I have no
22 further questions.

23 MR. SCHENSHINE: I have no questions of this
24 witness.

25 MR. PEACE: Might I briefly, your Honor?

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at them?

A Yes.

Q You looked at them?

A Yes.

Q Let me ask you again.

Mr. Gellman testified he was supplying some of the drivers of the association for nine months until late fall '71 and Mr. Spector testified that in late fall '71 he began supplying some of the drivers of the association with cake. Does that refresh your recollection as to when you were receiving payments from Mr. Gellman?

A I said I thought it was '72. But like you say, maybe it was fall '71.

Q Did you receive the payments from Mr. Gellman both before and after the break where Mr. Spector was supplying the cake instead?

A I don't remember.

Q Do you remember Mr. Gellman testifying here that before the business went to Paul Spector he paid you; do you remember that?

A I think he said that, yes.

Q Do you remember Mr. Gellman testifying on the stand that after the business came back to him he was paying you the money?

DeStefano-cross/Maintraub

nine months ending in the late fall of 1971. is that correct?

MR. SONENSHINE: Objection. That is argumentative.

THE COURT: Overruled.

A He testified to that.

Q That was correct?

A I can't swear that was correct. I said I thought it was part of '72, but he may be right.

Q Didn't you testify shortly after the break this morning that Mr. Gellman and Spector were basically correct in saying that Mr. Gellman lost the business to MR. Spector in late 1971?

A I think that is probably it.

Q Didn't you testify shortly after the break Mr. Gellman was correct when he testified that he had been paying for nine months prior to that and paying the percentage specified to you?

A I think I said then I didn't remember. I think it was '72, maybe it was '71.

You mentioned the fall and I said that could be right. It's only a matter of a couple of months and it's a long time ago.

Q Was Mr. Gellman telling the truth when he testified he paid you percentages for nine months in 1970

1
2 months the first time and then he lost the business for about
3 six months and then he started paying again after six months
4 and stopped in September of 1972; is that correct?

5 A I heard that.

6 Q Does that kind of match your recollection of
7 how long a period of time you were taking collections from
8 Mr. Gellman?

9 A No, no it doesn't.

10 Q It doesn't?

11 A No.

12 Q To your recollection it was an eight, nine
13 month period?

14 A That's the way I remember it.

15 Q Was Mr. Gellman mistaken?

16 A I don't know. He might have been right and I
17 may be wrong. I don't know.

18 Q And all of these monies went into the association,
19 didn't they, Mr. DeStefano?

20 A Yes.

21 Q Every penny of it?

22 A Every penny, yes.

23 Q You're positive of that. You are the man who
24 put it into the association treasury?

25 A Yes.

1
2 A I think that's what he said.

3 Q Is that correct -- did he testify truthfully --
4 is that right?

5 A I don't know. I guess so. The book would
6 show it.

7 Q Let's leave the books aside for the moment,
8 Mr. DeStefano.

9 Did you receive all those monies that Mr. Callman
10 gave to you that he testified to?

11 A To the best of my knowledge I must have collected
12 whatever he said I collected.

13 Q Did you report all those monies in the book?

14 A Yes, everything he gave me went into the book.

15 Q I'd like to show you what has been marked
16 Government's Exhibit 36 in evidence which is a cash receipt
17 book for the association starting back around -- let's see --
18 earliest date would be August of '70 coming up through
19 December, '71.

20 I'd like you to look at this Exhibit 36, Mr.
21 DeStefano, and tell us if you find anywhere in that exhibit
22 an entry for a donation, contribution or any other payment
23 of Mr. Callman with relation to the cake business.

24 (Exhibit handed to witness.)

25 (Pause.)

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A I don't see it in this book.

Q Thank you Mr. DeStefano.

Now, I'd like to show you Exhibit 34 in evidence,
another cash receipt book beginning January '72 and continuing
on from there.

Just let us know, sir, the first time you come
to a contribution that is for the cake.

(Exhibit handed to witness.)

(Pause.)

A Here's one, March 17 --

THE COURT: I can't hear you.

THE WITNESS: I find one on March 17.

Q 1972?

A Yes.

Q That's the first one you found?

A Yeah.

Q Do you want to check back?

A Yes. Can I?

Q Surely.

THE COURT: Who was that contribution from?

THE WITNESS: Cake Man.

THE COURT: Which one?

THE WITNESS: Paul J. I guess. Paul Cellman.

THE COURT: How much?

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THE WITNESS: §22.

THE COURT: §22.

THE WITNESS: That's the first one I see.

Q Are there others besides that, Mr. DeStefano?

A On March 24th, the following week.

(Continued on next page)

fol.

and

DeStefano-cross/Waintraub

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Q You already looked at this book before you took the witness stand last week, right?

A Yes. This is one of them.

Q Did the contributions continue after that date to your knowledge?

A (No response.)

Q In the book, does it talk about other entries?

A ON May 5, '72. May 3 or 19.

Q Okay, Mr. DeStefano, that is sufficient at this point.

(Pause.)

Q The very first time there is any entry in that book is March 3, 1972?

MR. SONENSHINE: Objection to the form of the question. It assumes a fact not in evidence.

THE COURT: The book is not in evidence.

MR. SONENSHINE: He asked him to look at the book and tell him what he saw. It may be that is not the first entry but maybe the first one he saw.

THE COURT: I will allow it. This is the secretary-treasurer.

Q Did you keep those books when you were secretary-treasurer?

A Louis and I.

Sensation - Bernstein

1531

1
2 Federal Court, take an oath in a Courtroom of
3 this stature and life to you?

4 Why should he do that? What possible
5 reason is there? Was he asked in the Grand Jury?
6 No. He was asked a question here: What happened?
7 He was asked the questions, answers responsively,
8 stood by the story and has no : ives to lie.

9 Rahle, no one attributes a motive to him.
10 He's just mistaken.

11 And then, of course, two people who no
12 one seems to comment about too much, the Stinges.
13 they're not even accused of being mistaken and
14 there is no reason to lie except that little
15 amorous cloud that gets blown around when there
16 is nothing else to say, they want to be on the
17 side of the Government.

18 You saw their demeanor on the stand, ladies
19 and gentlemen. You saw their demeanor. It was
20 like pulling teeth out of them. Grudgingly they
21 admitted the truth. Grudgingly. But they admitted
22 the truth of what they said in the Grand Jury.] 6

23 And we haven't heard very much about them
24 from defense counsel. I'll come back to their
25 testimony.

11

Weintraub-examination

1 told Paul Spector, "I switched over because we got
2 a good deal. The old man went out and squeezed
3 Willy," meaning the owner of Quik-Snak, "pretty
4 good."
5

6 And who was the old man? Philip Rastelli.
7 Rusty. He hasn't lost interest in the association.
8 He hasn't lost interest in the money to be made from
9 the association by squeezing commissary owners
10 pretty good.

11 Ladies and gentlemen, I suggest to you that
12 there is evidence in this record that the \$300 a week
13 salary that is reflected on Mr. Petrole's tax returns
14 is not all the money that Quik-Snak paid, but there
15 were additional cash payments which didn't show up
16 there.

17 MR. PEACE: Objection.

18 THE COURT: The jury can make an inference.
19 Overruled.

20 A [MR. WEINTRAUB: What other commissaries were
21 involved? Well, we have some testimony from
22 Mr. Spector, and not Mr. Spector by himself but with
23 Ralph and Gus Stingo. Ladies and gentlemen, I submit
24 that Ralph and Gus Stingo were not happy to be called
25 as witnesses in this case. They were not anxious to

12 Weintraub-summa lion

get up there and give their testimony.

MR. SCHENSHINE: Objection.

THE COURT: Overruled.

MR. WEINTRAUB: Their testimony had to be extracted as if they were sitting in a dentist's chair having teeth pulled. But ladies and gentlemen, with that testimony --

THE COURT: Overruled. Don't interrupt.

MR. SCHENSHINE: All right, I'll wait.

MR. WEINTRAUB: When that testimony was extracted, it backed up Mr. Spector on almost every detail. They formed a partnership in 1970. They went out to try to buy Canteen Associates, and they were going to buy Canteen Associates, servicing some 20-odd drivers, with a lease and equipment, and they were buying good will. What is good will?

(Continued next page.)

Bornstein-Summaion

1
2 money was coming from. That is precisely what
3 happened here, and that they didn't do it more
4 completely demonstrates their wisdom. They didn't
5 want to kill the goose that laid the golden egg.
6 If there wasn't total control, that goes to the
7 success of the conspiracy here, not the existence of
8 it. And if they didn't exert total control it's
9 because they did not want a rebellion. They were
10 getting enough out of it. Perhaps they were smart
11 enough not to be greedy. But it doesn't mean that
12 it never happened, because what else explains these
13 drivers going where the money flows?

14 cI And then of course there is the argu ent that
15 — no threats were ever made, nobody forced these
16 drivers to move. Well, ladies and gentlemen, I say
17 it again, if you have the power of that association
18 behind you and you have the power of Philip Rastelli
19 behind you, you didn't have to beat somebody over
20 the head, your presence and your smooth talk and
21 the velvet word was enough. The velvet word that
22 has come out from witnesses here as respect,
23 cooperation, agreement.

24 Because behind that velvet word there was a
25 velvet hammer. c And that control that these men

1
2 MR. PEACE: I must object.

3 THE COURT: Change it to Mr. Petrole was getting
4 paid certain monies.

5 MR. WEINTRAUB: I will rephrase it that way,
6 your Honor.

7 Q It had nothing to do with you that Mr. Petrole
8 was getting money derived from association business when
9 association members are raising, continually, at meetings that
10 there is no bulk buying --

11 MR. PEACE: Objection.

12 THE COURT: I will allow it.

13 Were you aware of it and it was no concern of
14 yours?

15 THE WITNESS: It was of great concern of mine.
16 I didn't leave them alone. Louis was in the office
17 with them. He was president of the association.

18 THE COURT: You didn't feel it was your
19 responsibility as a trustee to raise your voice at
20 this point?

21 THE WITNESS: No.

22 A Q Mr. DeStefano, didn't you testify on direct
23 that when Mr. Bruce suggested raising prices that you, as an
24 officer of the association could not stand by and let the
25 membership be abused in that way and therefore you told him

1
2 he couldn't do it and shouldn't do it?

3 A I didn't tell him directly. I spoke in general
4 to Bill, Louis and Gary.

5 Q You were so incensed --

6 A No, it wasn't the way he says, no. I didn't
7 get up in a huff and get out.

8 Q Didn't you get into an argument with Bruce?

9 A No. I said, I don't think you should raise it.
10 You're not giving the men a better sandwich.

11 Q You said that Bruce shouldn't raise it because
12 he's not giving a better sandwich?

13 A Right.

14 Q No argument?

15 A No argument.

16 Q Were you asked to leave after that comment?

17 A Yeah.

18 Q And there was no heated discussion before you
19 were asked to leave?

20 A No heated discussion.

21 Q Did you hear Mr. Bruce testifying?

22 A Yes.

23 Q Did you hear him say it was a heated discussion?

24 A Yes.

25 Q Was he telling the truth?

1
2 A No, he wasn't.

3 Q Do you know any reason why he would like on the
4 witness stand?

5 MR. SONENSHINE: Objection. He is asking him
6 to testify to the state of mind of another witness.

7 THE COURT: I will allow it.

8 Q Do you know why Mr. Bruce would come in here
9 and perjure himself?

10 A I don't think the man ever took a liking to me
11 because I was just too much for my men.]A

12 Q You were concerned about prices going up, Mr.
13 DeStefano, but you were not concerned that Mr. Petrole was
14 receiving payments for association business while the
15 association was getting no discount on it?

16 A That was Mr. Petrole's business not mine.

17 Q It had nothing to do with you?

18 A What's it got to do with me?

19 Q You were not concerned about that at all?

20 A No.

21 Q By the way, Mr. DeStefano, how many hours a
22 day did you work on association business while you were an
23 officer?

24 A It varied.

25 Q Varied?

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Q Why was he lying?

3

A Because I never said it.

4

Q Does he have a reason to lie?

5

A He must have.

6

Q When you went out to see about the bumping at Eden Transportation, did you have a gun with you, sir?

7

8

A No.

9

Q Did you have a gun in your belt, sir?

10

A No.

11

Q Did you hear Mr. Tillman testify to that?

12

A Yes.

13

Q Had you ever met Mr. Tillman before today to your knowledge?

14

15

A No.

16

Q Does he have any reason to lie?

17

A I don't think so.

18

MR. SONENSHINE: I object to it.

19

THE COURT: If he knows a reason.

20

A No, I don't know if he has a reason to lie. 26

21

Q You had occasions when using the office at Bruce Vending to have drivers come in and complain there was someone else competing on a stop?

22

23

24

A Occasionally it happened.

25

Q Occasionally happened?

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
)ss:
COUNTY OF KINGS)

Marie Miller, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at Brooklyn, New York. That on the 1st day of November, 1976 deponent served the within three copies of APPENDIX TO BRIEF on behalf of Rastelli, et al. upon Hon. David G. Trager, United States Attorney, Eastern District of New York in this action at 225 Cadman Plaza East, Brooklyn, New York the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this
1st day of November, 1976

Marie Miller

ELIZABETH ANNE HARRIS
Notary Public, State of New York
No. 24-0054050
Qualified in Kings County
Commission Expires March 20, 1977

Elizabeth Anne Harris